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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/903,954
Filing Date	7/12/2001
First Named Inventor	Garst
Group Art Unit	1618
Examiner Name	Fay, Z.
Attorney Docket Number	17095CIPCON

Total Number of Pages in This Submission

		ENCLOS	JRES (check all	that apply)		
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	S	IGNATURE OF	APPLICANT, ATTOR	NEY, OR AGENT		
Firm Name	Stout, Uxa, B	uyan & Mullir	ng, LLP			
Signature	(and	ce l	ET15 6			
Printed Name	Carlos A. Fish	ner	11			
Date	1/22	107		Reg. No.	3	6,510
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applio	cant: Garst	c, Michael E.)	Group Art	Unit:	1618
Serial	L No: 09/903	3,954)	Examiner:	Fay, Z.	
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PETITION UNDER 37 CFR §1.182 TO REFUND EXTENSION FEES AND PETITION FEE

Mail Stop Petitions

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

01/26/2007 CNEGA1 00000017 010885 0990395 01 FC:1462 400.00 DA

Dear Sir:

Applicants have prepared and are filing this Petition to invoke the Supervisory Power of the Director.

Applicants filed an Appeal Brief in the above-referenced patent application on July 10, 2006. Applicants have received no further communication from the USPTO regarding this application since this time.

On January 5, 2007 the undersigned received an inquiry from the assignee of the entire interest in the present patent application asking whether any further communication had been received by the undersigned's law office from the USPTO in this case. Although the assignee's address is the Correspondence Address in this matter, Applicants had not received any such

communication either.

A search of the Public Pair website, also conducted on January 5, 2007, revealed that although the Transaction History section contained an entry reading "08-08-2006: Notice - Defective Appeal Brief", the Electronic File History section of the Public Pair website showed no documents having an entry date later than the date the Appeal Brief was scanned; July 12, 2006. The undersigned has printed copies of these lists, and attached them hereto as Exhibits A and B to this Petition, respectively. Note that the date of this search (01/05/2007) appears at the upper right hand corner of each page of the two Exhibits.

The undersigned then, on the same day, called the Examiner, who was not then available, and left a message explaining that a Notice of Non-Compliant Appeal Brief had not been received in this matter, despite being referenced in the Transaction History section of Public Pair.

On or about January 8th, 2007 the undersigned received a telephone call from Examiner Fay, who indicated that she has resolved the problem, and that the Notice had been sent for scanning, and would be mailed promptly.

Applicants (the assignee of the present patent application, whose address is the Correspondence Address) first received the mailed copy of the Notice of Non-Compliant Appeal Brief on January 18, 2007. However, on January 17, 2007 a search by the undersigned's docket clerk revealed a new entry in the Electronic File History section of Public Pair, indicated as having a "mail room date" of August 8, 2007. A copy of this web page, printed January 18, 2007, is attached hereto as Exhibit C, and now shows

the addition of the Notice of Non-Compliant Appeal Brief previously referred to in the Electronic File History. However, the Notice has a mailing date of August 8, 2007, despite not having been formally received (i.e., by mail) by either the Applicants or the undersigned until January 18, 2007. The Notice correctly indicates that the Appeal Brief was filed without a Related Proceedings Appendix.

In order to avoid abandonment, Applicants have filed a Substitute Appeal Brief containing the Related Proceedings Appendix, indicating "none", and must file a Petition for a 5 Month Extension of Time with the extension fee of \$2,160.00, as well as a petition fee of \$400.00 for this petition as provided by 37 CFR \$1.182.

Applicants submit that, if at all, the Examiner should have sent the Notice of Non-Compliant Appeal Brief to the Correspondence address for this application with a <u>new mailing date</u> reflecting the January 2007 date that the communication was actually made available to the Applicants.

Applicants also note that Section 1205.03 of the MPEP indicates that "[t]he examiner should not require a corrected brief for minor non-compliance in an appeal brief . . . (A) if the evidence appendix and the related proceedings appendix are missing, but the record is clear that there is no evidence submitted and no related proceedings listed in the related appeals and interferences section, the examiner may accept the brief and state in the examiner's answer that it is assumed that the appellant meant to include both appendixes with a statement of 'NONE.' "(emphasis added). Obviously, where, as here, only

the one-page related proceedings appendix (indicating that there are no related proceedings) was missing, the error is truly minor and in any event should not automatically cost the Applicant thousands of dollars by a Notice of Non-Compliant Brief first being made available to the Applicants in the sixth month for reply.

For these reasons, Applicants hereby earnestly petition the Director to exercise his supervisory authority, and refund to Applicants' Deposit Account 01-0885 the amount of the extension fees and petition fee (\$2,560.00).

Respectfully submitted,

Dated: Ulqot

Registration No. 36,510

View Order List

Exhibit A



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08-08-2006	Notice Defective Appeal Brief	
08-07-2006	Appeal Brief Review Complete	
08-07-2006	Date Forwarded to Examiner	
07-12-2006	Defective / Incomplete Appeal Brief Filed	
07-12-2006	Appeal Brief Filed	
07-13-2006	Date Forwarded to Examiner	
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	07-12-2001	Search information including classification, databases and other search related notes	1	0
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